

State of Wisconsin* DEPARTMENT OF REVENUE * DIVISION OF STATE AND LOCAL FINANCE
BUREAU OF UTILITY AND SPECIAL TAXES * P.O. BOX 8933 0 125 SOUTH WEBSTER STREET 0
MADISON, WI 53708-8933

REAL ESTATE TRANSFER NEWS March 1995

The following questions and answers are given as general interpretations of the Wisconsin Administrative Code and Statutes. Should you have any

questions, please write to: Bureau of Utility and Special Taxes
Wisconsin Department of Revenue P.O. Box 8933
Madison, WI 53708-8933

1Q. RETN Question 1, May 1994 states "Does the value of the real estate conveyed have to be put on every transfer return whether or not a fee is imposed?" If exemption 3 or 10 is used, should a value be disclosed?

A. Value must be reported for all conveyances reported whether exempt from the fee or not. However, if exemptions 3 and 10 are used properly a conveyance has not occurred. If this is the case, value need not be disclosed. See page I of "Guidelines."

For review purposes: 1) Exemption 3 "corrects" a deed where the property was actually conveyed. Filers need to record on line 18 the document number that is being corrected. 2) Exemption 10 solely provides or releases security for a debt and does not convey a real property interest.

2Q. Are transfer returns required for easements?

A. No. Easements are specifically excluded from transfer return requirements by statute. See the first line on the instructions for the return. The instrument being recorded should indicate that the transaction is an easement so as to avoid any confusion when recording without a transfer return.

3Q. Are copies of transfer returns acceptable if they have original signatures?

A. No. A completed multi-page Wisconsin Real Estate Transfer Return (PE-500) must be filed with the instrument of conveyance. Faxes and photocopies are not acceptable. The transfer returns are color coded to assist the counties and district offices in sorting and mailing the form to the proper user. (See RETN Q 4, May 1994)

4Q. When a lot is sold contingent upon a specific builder or builders constructing the improvements, how is the transfer fee calculated?

A. The fee is calculated on the entire "package" of the lot and improvement. When land is sold as a package deal the fee is calculated on the entire contract. The value of the contract for conveyance includes the value of improvements. Improvements and fixtures are considered real estate subject to transfer fee per s. 77.21(1m), Stats. (RETN, Q14, Q15, & Q16, February 1984).

5Q. Is there a window of time from which a purchase of land with the construction contingency and actual construction where a fee would not be due on the "package"?

A. No, if the lot is purchased with the contingency that the developer/contractor is the only one who can do the construction, then a fee is due on the entire value regardless of construction date.

6Q. How should a transfer return be completed showing both grantors being the developer/land owner and the contractor?

A. The Department would prefer two transfer returns, one for the actual land title holder and one for the improvements. Both returns would accompany the deed and two fees would be placed on that deed. The transfer return would have the same document and recording data filled in on the bottom of the form. If one return is filed, both would be listed as grantors and indicate which is land and which is improvement.

7Q. A Register of Deeds asked "If there is an outstanding mortgage on a property and a deed is presented for recording using exemption 8, how far are we expected to pry into the private lives of the grantor and grantee to determine if the exemption is appropriate?"

A. Section 77.22(1) of the Statutes states in part "The register shall have no duty to determine either the correct value of the real estate transferred or the validity of any exemption or exclusion claimed This statute further states that "submission of a completed real estate transfer return and collection by the register of the fee shall be prerequisites to acceptance of the conveyance for recording." The DOR has defined for the Register what a completed return is in "Criteria for a Completed Real Estate Transfer Return."

For a review of what we previously stated as to what your duties may be, see Question 4 of the RETN, November 1981 as revised February 1984.

8Q. Where a municipality 1) buys manufacturing property, 2) negotiated the sale without threat of condemnation, and 3) never intended to use its right to condemn such property, is a transfer fee due?

A. Yes!

9Q. The following fact situation was presented to us for comment:

Two unrelated individuals ("A1" and "B1") own as tenants-in-common a single piece of real estate. Each individual owns 50% of the real estate. The following transactions are proposed:

Transaction No 1. "A" contributes his/her respective 50% tenant-in-common interest into a limited liability company ("LLC") (only descendants, siblings or spouses of siblings are members of the LLC) in exchange for an interest in the LLC and possibly an assumption of debt by the LLC.

Transaction No. 2. "B" contributes his/her respective 50% tenant-in- common interest into an LLC (only descendants, siblings or spouses of siblings are members of the LLC) in exchange for an interest in the LLC and possibly an assumption of debt by the LLC.

Transaction No 3. The two LLCs are then merged into a new LLC with the two unrelated owners as members (or alternatively, one LLC merges into the other LLC).

A. With respect to Transactions 1 and 2, no transfer fee is due under Wisconsin Statutes section 77.25 because section 77.25(15s) exempts a transfer between an LLC and one or more of its members if all the members are descendants, siblings, or spouses of siblings and if the transfer is for no consideration other than the assumption of debt or an interest in the LLC.

With respect to Transaction No. 3, no transfer fee is due under Wisconsin Statutes section 77.25 because sections 77.21(1e) and 77.25(6) exempt a transfer which results from the merger, consolidation, or combination of two or more LLC's under a plan of merger.